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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 488

JAY M. ROWLAND,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Jay M. Rowland, the Appellant herein, in support of his Petition for Rehearing on his application for Writ of Certiorari herein, states:

1

There are no intervening circumstances known to the Petitioner at this time.

2

Substantial grounds available to Petitioner although not previously presented in his Petition for Writ of Certiorari are as follows:

(a.) At two o'clock on Sunday morning the jury returned its written verdict to the court and the jurors were polled by the clerk. The verdict read as follows:

> "We, the Jury, find the defendant guilty as charged and assess his punishment at a fine of blank

dollars and imprisonment of blank years in the State Penitentiary."

The Court then said, "You did not complete the verdict," and the foreman asked, "Do we have to do that?" The Court replied, "Yes, you do. Retire to the jury room and complete your verdict." The Court then proceeded to instruct the jury with reference to its duties and as to the punishment that the law provides.

At 2:22 o'clock the jury again returned the verdict:

> "We, the Jury, find the defendant guilty as charged and assess his punishment at a fine of $750.00 and imprisonment of one year in the State Penitentiary."

Again the jurors were polled.

This proceeding was in violation of Section 2718 of Pope's Digest, and this act by the Court in instructing the jury is a judicial act and void, having been done on Sunday without request from the jury.

(b.) The person alleged in the Petitioner's Indictment to have been operating a gambling establishment and giving bribes to Petitioner was never charged with the offense of bribery and has never been tried nor convicted.

Argument

(2a) Section 2718 of Pope's Digest reads as follows:

> "Not to open on Sunday. No court shall be opened or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury, and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate when it may be necessary in criminal cases to preserve the peace or arrest the offenders."

Any action of a judicial nature cannot be taken on Sunday, and the instructions given by the court to the jury were void and the final verdict was therefore void. (Cf. *Stone* v. *U. S.*, 17 Sup. Ct. 778, 167 U. S. 178.)

(2b) The bribery statute, Section 3249 of Pope's Digest, provides that any person giving a bribe shall be convicted thereof before any officer or person who shall anywise accept or receive the same shall be liable to indictment.

The person in this case who was alleged to have given the bribe has never been charged with the offense, tried nor convicted of it, and the statute requires that he be convicted before an indictment can be returned against Petitioner for receiving the bribe.

Respectfully submitted,

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
and
Henry Donham,
Little Rock, Arkansas,
Counsel for Petitioner.

Certificate of Counsel

C. Floyd Huff, Jr., Counsel for Petitioner herein, states that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that the Petition is restricted to intervening circumstances of substantial or controlling effect, or to other substantial grounds available to petitioner although not previously presented.

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Counsel for Petitioner.